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March 14, 1983

Mr. Lloyd M. Price, Commissioner  
Department of Revenue Administration  
61 South Spring Street  
Concord, New Hampshire 03301

Re: Tax Exemption for the Elderly

Dear Mr. Price:

In your memorandum of December 16, 1982, you asked whether Railroad Retirement income should be considered exempt in determining individuals' eligibility for tax exemptions under RSA 72:40, II(d), 72:43-c, II(d), and 72:43-g, II(d). These statutes in pertinent part provide that social security income is to be deducted in order to determine an individual's net income for purposes of applying the elderly tax exemption. Although these statutes do not specifically exempt Railroad Retirement income, the Department has taken the position that Railroad Retirement income should be exempt for the purpose of determining net income in applying the elderly tax exemption. It is our opinion that Railroad Retirement income is properly exempted from the determination of net income as such payments generally conform to Social Security payments. The Department's practice is therefore correct.

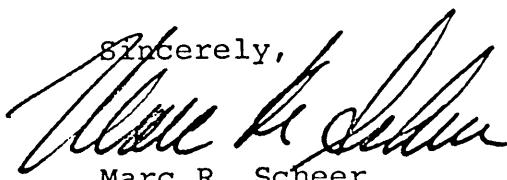
The Railroad Retirement Act provides a system of retirement and disability benefits for individuals who work in the railroad industry. See Hisquierdo v. Hisquierdo, 439 U.S. 572, 573 (1979). Since the enactment of the Railroad Retirement Act of 1937, Congress has amended it several times to make it conform more closely to the Social Security Act. Id., fn. 3. In its current form, Railroad Retirement consists of a two-tiered benefit system. The upper tier is tied to earnings and career service. Id. at 574. And as noted by the Supreme Court, "the lower, and larger,



tier of benefits corresponds exactly to those an employee would expect to receive were he covered by the Social Security Act." Id. at 575. Given this identity of benefits, Railroad Retirement income is properly exempt from the determination of net income under a provision which exempts Social Security income. Based on the foregoing, the Department's interpretation of the afore-mentioned statute to authorize exemption of Railroad Retirement income is proper.

Please let me know if I can be of additional assistance.

Sincerely,



Marc R. Scheer  
Assistant Attorney General  
Division of Legal Counsel

MRS:ab

cc: Mr. Arthur Danie, Assistant Commissioner  
#82-163-I